

BILL ANALYSIS

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S.B. 1421
By: Janek
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DIGEST AND PURPOSE

Over the last several decades, the federal government has created several programs that require states to establish a "single state agency" to administer each health and human services (HHS) program where other similar programs are already in place. The resulting array of state agencies delivering similar services may be confusing and cumbersome, and the comptroller of public accounts has issued an e-Texas recommendation to consolidate these agencies. As proposed, S.B. 1421 amends current law to consolidate all HHS programs into five agencies, combining similar services and activities and consolidating support structures to eliminate duplication and improve cost-effectiveness.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of health and human services in SECTIONS 1.03, 1.06, 2.01, 2.02, and 4.05 (Sections 531.0055, 531.0224, 1001.029, 1001.051, 1001.052, 1001.076, 161.029, 161.052, 161.073, 181.029, 181.052, 181.073, 201.029, 201.052, 201.073, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. HEALTH AND HUMAN SERVICES COMMISSION

SECTION 1.01. Reenacts and amends Section 531.001(4), Government Code, as amended by Chapters 53, 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(4) Provides that "health and human services agencies" includes the: Department for Children and Families, Department on Aging rather than the Texas Department on Aging; Department for Persons with Disabilities; and the Department for Health and Mental Health. Deletes from the list of agencies that are included as health and human service agencies the: Interagency Council on Early Childhood Intervention; Texas Commission on Alcohol and Drug Abuse; Texas Commission for the Blind; Texas Commission for the Deaf and Hard of Hearing; Texas Department of Health; Texas Department of Human Services; Texas Department of Mental Health and Mental Retardation; Texas Rehabilitation Commission; Department of Protective and Regulatory Services; and Texas Health Care Information Council.

SECTION 1.02. Amends Section 531.004, Government Code, as follows:

Sec. 531.004. SUNSET PROVISION. Continues the Health and Human Services Commission (HHSC) until September 1, 2009.

SECTION 1.03. Amends Section 531.0055, Government Code, as follows:

Sec. 531.0055. New heading: COMMISSIONER: GENERAL RESPONSIBILITY FOR HEALTH AND HUMAN SERVICES AGENCIES. (a) Redefines "agency director" to mean the executive director of a health and human services agency. Deletes the definition of "policymaking body."

(b) Requires HHSC to perform certain functions.

(c) Requires HHSC to implement the powers and duties given to HHSC under Sections 531.0246, 531.0247, 2155.144, and 2167.004.

(d) Provides that the performance of administrative support services for health and human services agencies is the responsibility of HHSC. Provides that the term "administrative support services" includes, but is not limited to, strategic planning and evaluation, audit, legal, human resources, purchasing, contract management, financial management, and accounting services.

(e) Requires the commissioner of health and human services (commissioner) notwithstanding any other law, to adopt rules and policies for the operation of and provision of health and human services by the health and human services agencies. Requires the commissioner, in addition, as necessary to perform the functions described by Subsections (b), (c), and (d) in implementation of applicable policies established for an agency by the commissioner, to:

- (1) manage and direct the operations of each health and human services agency; and
- (2) supervise and direct the activities of each agency director.

(f) Provides that the operational authority and responsibility of the commissioner for purposes of Subsection (e) at each health and human services agency includes authority over and responsibility for certain other functions.

(g) Make a conforming change.

(h) No change to this subsection.

(i) Provides that an agency director acts on behalf of and reports to the commissioner in performing a delegated function.

(j) Requires, rather than authorizes, the commissioner to adopt rules to implement the commissioner's authority under this section.

(k) Requires the commissioner and each agency director to enter into a memorandum of understanding in the manner prescribed by Section 531.0164 that meets certain objectives.

SECTION 1.04. Amends Section 531.0056, Government Code, as follows:

Sec. 531.0056. EMPLOYMENT OF AGENCY DIRECTOR. (a) Requires the commissioner to hire an agency director for each health and human services agency.

(b) Requires the agency director to serve at the pleasure of the commissioner

(c) Provides that in addition to the requirements of Section 531.0055(k)(1), the memorandum of understanding between the commissioner and agency director required by that section must clearly define the terms of the agency director's employment.

(d) Requires the terms of the memorandum of understanding to outline specific performance objectives, as defined by the commissioner, to be fulfilled by the agency director, including the performance objectives outlined in Section 531.0055(h).

(e) No change made to this subsection. Deletes existing subsections (f) - (h).

SECTION 1.05. Amends Chapter 531A, Government Code, by adding Sections 531.0161

through 531.0165, as follows:

Sec. 531.0161. **NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE PROCEDURES.** (a) Adds standard Sunset language regarding the use of negotiated rulemaking.

(b) Requires the procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

Sec. 531.0162. **USE OF TECHNOLOGY.** (a) Adds standard Sunset language regarding the use of technological solutions to improve an agency's ability to perform its functions.

(b) Requires HHSC to develop and implement a policy described by Subsection (a) in relation to HHSC's functions.

Sec. 531.0163. **PURCHASING.** Requires HHSC, notwithstanding any other law, to make all purchases for health and human services agencies. Authorizes HHSC to delegate purchasing authority to a health and human services agency under circumstances in which HHSC determines that it is not cost-effective for HHSC to make the purchases. Requires the agency, if HHSC delegates purchasing authority to a health and human services agency, to comply with Section 2155.144.

Sec. 531.0164. **MEMORANDUM OF UNDERSTANDING.** (a) Requires the memorandum of understanding under Section 531.0055(k) to be adopted by the commissioner by rule in accordance with the procedures prescribed by Subchapter B, Chapter 2001, for adopting rules, except that the requirements of Section 2001.033(a)(1)(A) or (C) do not apply with respect to any part of the memorandum of understanding that concerns and relates to certain issues.

(b) Authorizes the memorandum of understanding to be amended only by following the procedures prescribed under Subsection (a).

Sec. 531.0165. **TRANSFER OF PROGRAMS AND FUNCTIONS; COORDINATION.** (a) Authorizes HHSC to perform certain functions.

(b) Requires a decision of the commissioner to resolve any conflict between the health and human services agencies.

(c) Requires the commissioner and the executive director of each affected agency, if the commissioner transfers all or part of a program or function to HHSC or one or more health and human services agencies, to amend the memorandum of understanding required by Section 531.0055(k) to reflect any change in responsibilities that results from the transfer.

SECTION 1.06. Amends Chapter 531B, Government Code, by adding Section 531.0224, as follows:

Sec. 531.0224. **PLANNING AND POLICY DIRECTION OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM.** Requires HHSC to perform certain functions.

SECTION 1.07. Repealers: Sections 531.0057 (Authority Over Rulemaking at Health and Human Services), 531.034 (Review of Agency Rulemaking), and 531.0345 (Coordination on Inpatient Mental Health Services), Government Code.

ARTICLE 2. HEALTH AND HUMAN SERVICES AGENCIES

SECTION 2.01. Amends the Health and Safety Code by adding Title 12, as follows:

TITLE 12. HEALTH AND MENTAL HEALTH
SUBTITLE A. HEALTH AND MENTAL HEALTH SERVICES
CHAPTER 1001. DEPARTMENT FOR HEALTH AND MENTAL HEALTH
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1001.001. DEFINITIONS. Defines "advisory board," "agency," "commission," "commissioner," and "executive director."

Sec. 1001.002. AGENCY. Provides that the Department for Health and Mental Health (agency) is an agency of the state.

Sec. 1001.003. SUNSET PROVISION. Continues the agency until September 1, 2009.

[Reserves Sections 1001.004-1001.020 for expansion.]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 1001.021. ADVISORY BOARD FOR HEALTH AND MENTAL HEALTH. (a) Provides that the advisory board for health and mental health is created to assist the commissioner in developing rules and policies for the agency.

(b) Sets forth the composition of the advisory board

(c) Prohibits a person from being a public member of the advisory board if the person or the person's spouse meets certain criteria.

(d) Requires the advisory board to study and make recommendations to the executive director regarding the management and operation of the agency, including policies and rules governing the delivery of services to persons who are served by the agency and the rights and duties of persons who are served or regulated by the agency.

(e) Provides that Chapter 551 (Open Meetings), Government Code, applies to the advisory board.

(f) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the advisory board.

Sec. 1001.022. APPOINTMENTS. Adds standard Sunset language regarding appointments to the advisory board.

Sec. 1001.023. CONFLICTS OF INTEREST. Adds standard Sunset language regarding conflicts of interest.

Sec. 1001.024. TRAINING PROGRAM FOR ADVISORY BOARD MEMBERS. Adds standard Sunset language regarding training for persons appointed as members of the advisory board.

Sec. 1001.025. TERMS. Sets forth the terms for advisory board members.

Sec. 1001.026. VACANCY. Requires the governor by appointment to fill the unexpired term of a vacancy on the advisory board.

Sec. 1001.027. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) Requires the governor to designate a member of the advisory board as the presiding

officer to serve in that capacity at the pleasure of the governor.

(b) Requires the members of the advisory board to elect any other necessary officers.

(c) Requires the advisory board to meet quarterly and at other times at the call of the presiding officer. Authorizes the board to hold meetings in different areas of the state.

Sec. 1001.028. REIMBURSEMENT FOR EXPENSES. Adds standard Sunset language regarding an advisory board member's reimbursement.

Sec. 1001.029. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) Adds standard Sunset language regarding information of public interest and complaints.

(b) Requires the commissioner by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the agency for directing complaints to the agency.

Sec. 1001.030. PUBLIC ACCESS AND TESTIMONY. Requires the commissioner to develop and implement policies that provide the public with a reasonable opportunity to appear before the advisory board or commissioner and to speak on any issue under the jurisdiction of the agency.

Sec. 1001.031. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. Requires the commissioner, with the advice of the advisory board, to develop and the agency to implement policies that clearly delineate the policymaking responsibilities of the commissioner from the management responsibilities of HHSC, the executive director, and the staff of the agency.

Sec. 1001.032. ANNUAL REPORT. (a) Requires the executive director to file annually with the commissioner a complete and detailed written report accounting for all funds received and disbursed by the agency during the preceding fiscal year.

(b) Requires the annual report to be in the form and be reported in the time provided by the commissioner.

Sec. 1001.033. OFFICES. Requires the agency to maintain its central office in Austin. Authorizes the agency to maintain offices in other areas of the state as necessary.

[Reserves Sections 1001.034-1001.050 for expansion.]

SUBCHAPTER C. PERSONNEL

Sec. 1001.051. EXECUTIVE DIRECTOR. (a) Requires the commissioner to appoint an executive director, who is to be selected according to education, training, experience, and demonstrated ability.

(b) Provides that the executive director serves at the pleasure of the commissioner.

(c) Requires the executive director to act as the agency's chief administrative officer and as a liaison between the agency and HHSC.

(d) Requires the executive director to administer this chapter under operational policies established by the commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the executive director and the commissioner, as adopted by rule.

Sec. 1001.052. PERSONNEL. (a) Authorizes the agency to employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) Requires the commissioner to prepare and by rule adopt personnel standards.

(c) Authorizes a personnel position to be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) Requires the commissioner, with the advice of the advisory board, to develop and requires the agency to implement policies that clearly define the responsibilities of the staff of the agency.

Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. Adds standard Sunset language regarding qualifications and standards of conduct.

Sec. 1001.054. MERIT PAY. Requires the executive director or the executive director's designee, subject to rules adopted by the commissioner, to develop a system of annual performance evaluations. Requires all merit pay for agency employees to be given under the system established under this section or under rules adopted by the commissioner.

Sec. 1001.055. CAREER LADDER. Requires the executive director or the executive director's designee to develop an intra-agency career ladder program. Requires the program to require intra-agency postings of all nonentry-level positions concurrently with any public posting.

Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Adds standard Sunset language regarding a policy of equal employment opportunity.

Sec. 1001.057. STATE EMPLOYEE INCENTIVE PROGRAM. Requires the executive director or the executive director's designee to provide to agency employees information and training on the benefits and methods of participation in the state employee incentive program.

[Reserves Sections 1001.058-1001.070 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES OF AGENCY

Sec. 1001.071. GENERAL POWERS AND DUTIES OF AGENCY RELATED TO HEALTH CARE. Provides that the agency is responsible for administering human services programs regarding the public health, including certain enumerated duties.

Sec. 1001.072. GENERAL POWERS AND DUTIES OF AGENCY RELATED TO MENTAL HEALTH. Provides that the agency is responsible for administering human services programs regarding mental health, including certain specific duties.

Sec. 1001.073. GENERAL POWERS AND DUTIES OF AGENCY RELATED TO SUBSTANCE ABUSE. Provides that the agency is responsible for administering human services programs regarding substance abuse, including certain specified duties.

Sec. 1001.074. ADMINISTRATION OF OTHER HEALTH, MENTAL HEALTH, OR SUBSTANCE ABUSE PROGRAMS AND SERVICES. Requires the agency to administer other programs and services related to health, mental health, or substance abuse that the commissioner delegates to the agency as the commissioner determines necessary to efficiently provide those services in this state.

Sec. 1001.075. INFORMATION REGARDING COMPLAINTS. (a) Requires the agency to maintain a file on each written complaint filed with the agency. Requires the file to include certain information.

(b) Requires the agency to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commissioner's and the agency's policies and procedures relating to complaint investigation and resolution.

(c) Requires the agency, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 1001.076. RULES. Authorizes the commissioner to adopt rules reasonably necessary for the agency to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the executive director and the commissioner, as adopted by rule.

SECTION 2.02. Amends the Human Resources Code by adding Title 11 as follows:

TITLE 11. SERVICES FOR CHILDREN, FAMILIES, AND THE AGING AND DISABLED
SUBTITLE A. SERVICES FOR CHILDREN AND FAMILIES
CHAPTER 161. DEPARTMENT FOR CHILDREN AND FAMILIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. DEFINITIONS. Defines "advisory board," "agency" "commission" "commissioner," and "executive director."

Sec. 161.002. AGENCY. Provides that the Department of Children and Families (agency) is an agency of the state.

Sec. 161.003. SUNSET PROVISION. Continues the agency until September 1, 2009.

[Reserves Sections 161.004-161.020 for expansion.]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 161.021. ADVISORY BOARD FOR CHILD AND FAMILY SERVICES. (a) Provides that the advisory board for child and family services is created to assist the commissioner in developing rules and policies for the agency.

(b) Sets forth the composition of the advisory board.

(c) Prohibits a person from being a public member of the advisory board if the person or the person's spouse meets certain criteria.

(d) Requires the advisory board to study and make recommendations to the executive director regarding the management and operation of the agency, including policies and rules governing the delivery of services to persons who are served by the agency and the rights and duties of persons who are served or regulated by the agency.

(e) Provides that Chapter 551, Government Code (Open Meetings), applies to the advisory board.

(f) Provides that Chapter 2110, Government Code (State Agency Advisory Committees), does not apply to the advisory board.

Sec. 161.022. APPOINTMENTS. Adds standard Sunset language regarding appointments to the advisory board

Sec. 161.023. CONFLICTS OF INTEREST. Adds standard Sunset language regarding conflicts of interest.

Sec. 161.024. TRAINING PROGRAM FOR ADVISORY BOARD MEMBERS. Adds standard Sunset language regarding training for advisory board members.

Sec. 161.025. TERMS. Sets forth the terms for advisory board members.

Sec. 161.026. VACANCY. Requires the governor by appointment to fill the unexpired term of a vacancy on the advisory board.

Sec. 161.027. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) Requires the governor to designate a member of the advisory board as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) Requires the members of the advisory board to elect any other necessary officers.

(c) Requires the advisory board to meet quarterly and at other times at the call of the presiding officer. Authorizes the board to hold meetings in different areas of the state.

Sec. 161.028. REIMBURSEMENT FOR EXPENSES. Adds standard Sunset language regarding reimbursement for advisory board members.

Sec. 161.029. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) Adds standard Sunset language regarding information of public interest and complaints.

(b) Requires the commissioner by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the agency for directing complaints to the agency.

Sec. 161.030. PUBLIC ACCESS AND TESTIMONY. Adds standard Sunset language regarding policies that provide the public with a reasonable opportunity to appear before the advisory board or commissioner and to speak on any issue under the jurisdiction of the agency.

Sec. 161.031. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. Adds standard Sunset language regarding policies that clearly delineate the policymaking responsibilities of the commissioner from the management responsibilities of HHSC, the executive director, and the staff of the agency.

Sec. 161.032. ANNUAL REPORT. (a) Requires the executive director to file annually with the commissioner a complete and detailed written report accounting for all funds received and disbursed by the agency during the preceding fiscal year.

(b) Requires the annual report to be in the form and be reported in the time provided by the commissioner.

Sec. 161.033. OFFICES. Requires the agency to maintain its central office in Austin. The agency may maintain offices in other areas of the state as necessary.

[Reserves Sections 161.034-161.050 for expansion.]

SUBCHAPTER C. PERSONNEL

Sec. 161.051. EXECUTIVE DIRECTOR. (a) Requires the commissioner to appoint an executive director, who is to be selected according to education, training, experience, and demonstrated ability.

(b) Provides that the executive director serves at the pleasure of the commissioner.

(c) Requires the executive director to act as the agency's chief administrative officer and as a liaison between the agency and HHSC.

(d) Requires the executive director to administer this chapter under operational policies established by the commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the executive director and the commissioner, as adopted by rule.

Sec. 161.052. PERSONNEL. (a) Authorizes the agency to employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) Requires the commissioner to prepare and by rule adopt personnel standards.

(c) Authorizes a personnel position to be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) Requires the commissioner, with the advice of the advisory board, to develop and the agency to implement policies that clearly define the responsibilities of the staff of the agency.

Sec. 161.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. Adds standard Sunset language regarding the requirements for employment under this chapter or rules adopted by the commissioner, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Sec. 161.054. MERIT PAY. Requires the executive director or the executive director's designee, subject to rules adopted by the commissioner, to develop a system of annual performance evaluations. Requires all merit pay for agency employees to be given under the system established under this section or under rules adopted by the commissioner.

Sec. 161.055. CAREER LADDER. Requires the executive director or the executive director's designee to develop an intra-agency career ladder program. Requires the program to require intra-agency postings of all nonentry-level positions concurrently with any public posting.

Sec. 161.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Adds standard Sunset language regarding a policy of equal employment opportunity.

Sec. 161.057. STATE EMPLOYEE INCENTIVE PROGRAM. Adds Sunset language regarding a state employee incentive program.

[Reserves Sections 161.058-161.070 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES OF AGENCY

Sec. 161.071. GENERAL POWERS AND DUTIES OF AGENCY. (a) Provides that the agency is responsible for administering human services programs for children and families, including certain duties.

(b) Requires the agency to administer other programs and services for children and families that the commissioner delegates to the agency as the commissioner determines necessary to efficiently provide those services in this state.

Sec. 161.072. INFORMATION REGARDING COMPLAINTS. (a) Requires the agency to maintain a file on each written complaint filed with the agency. Requires the file to

include certain information.

(b) Requires the agency to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commissioner's and the agency's policies and procedures relating to complaint investigation and resolution.

(c) Requires the agency, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 161.073. RULES. Authorizes the commissioner to adopt rules reasonably necessary for the agency to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the executive director and the commissioner, as adopted by rule.

[Reserves Chapters 162-180 for expansion]

SUBTITLE B. SERVICES FOR THE AGING
CHAPTER 181. DEPARTMENT ON AGING
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 181.001. DEFINITIONS. Defines "advisory board," "agency," "commission," "commissioner," and "executive director."

Sec. 181.002. AGENCY. Provides that the Department on Aging (agency) is an agency of the state.

Sec. 181.003. SUNSET PROVISION. Continues the agency until September 1, 2009.

[Reserves Sections 181.004-181.020 for expansion.]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 181.021. ADVISORY BOARD FOR AGING SERVICES. (a) Provides that the advisory board for aging services is created to assist the commissioner in developing rules and policies for the agency.

(b) Sets forth the composition of the advisory board.

(c) Prohibits a person from being a public member of the advisory board if the person or the person's spouse meets certain criteria.

(d) Requires the advisory board to study and make recommendations to the executive director regarding the management and operation of the agency, including policies and rules governing the delivery of services to persons who are served by the agency and the rights and duties of persons who are served or regulated by the agency.

(e) Provides that Chapter 551 (Open Meetings), Government Code, applies to the advisory board.

(f) Provides that Chapter 2110, Government Code (State Agency Advisory Committee), does not apply to the advisory board.

Sec. 181.022. APPOINTMENTS. Adds standard Sunset language regarding appointments to the advisory board.

Sec. 181.023. CONFLICTS OF INTEREST. Adds standard Sunset language regarding conflicts of interest.

Sec. 181.024. TRAINING PROGRAM FOR ADVISORY BOARD MEMBERS. Adds standard Sunset language regarding training for a person who is appointed as a member of the advisory board.

Sec. 181.025. TERMS. Sets forth the terms for advisory board members.

Sec. 181.026. VACANCY. Requires the governor by appointment to fill the unexpired term of a vacancy on the advisory board.

Sec. 181.027. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) Requires the governor to designate a member of the advisory board as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) Requires the members of the advisory board to elect any other necessary officers.

(c) Requires the advisory board to meet quarterly and at other times at the call of the presiding officer. Authorizes the board to hold meetings in different areas of the state.

Sec. 181.028. REIMBURSEMENT FOR EXPENSES. Adds standard Sunset language regarding reimbursement for advisory board members.

Sec. 181.029. PUBLIC INTEREST INFORMATION AND COMPLAINTS. Adds standard Sunset language regarding information of public interest and complaints.

Sec. 181.030. PUBLIC ACCESS AND TESTIMONY. Adds standard Sunset language regarding public access and testimony.

Sec. 181.031. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. Adds standard Sunset language regarding policies that clearly delineate the policymaking responsibilities of the commissioner from the management responsibilities of HHSC, the executive director, and the staff of the agency.

Sec. 181.032. ANNUAL REPORT. Adds standard Sunset language regarding a report accounting for all funds received and disbursed by the agency during the preceding fiscal year.

Sec. 181.033. OFFICES. Requires the agency to maintain its central office in Austin. Authorizes the agency to maintain offices in other areas of the state as necessary.

[Reserves Sections 181.034-181.050 for expansion.]

SUBCHAPTER C. PERSONNEL

Sec. 181.051. EXECUTIVE DIRECTOR. (a) Requires the commissioner to appoint an executive director, who is to be selected according to education, training, experience, and demonstrated ability.

(b) Provides that the executive director serves at the pleasure of the commissioner.

(c) Requires the executive director to act as the agency's chief administrative officer and as a liaison between the agency and HHSC.

(d) Requires the executive director to administer this chapter under operational

policies established by the commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the executive director and the commissioner, as adopted by rule.

Sec. 181.052. PERSONNEL. (a) Authorizes the agency to employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) Requires the commissioner to prepare and by rule adopt personnel standards.

(c) Authorizes a personnel position to be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) Requires the commissioner, with the advice of the advisory board, to develop and the agency to implement policies that clearly define the responsibilities of the staff of the agency.

Sec. 181.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. Adds standard Sunset language regarding information about qualifications and standards of conduct.

Sec. 181.054. MERIT PAY. Requires the executive director or the executive director's designee, subject to rules adopted by the commissioner, to develop a system of annual performance evaluations. Requires all merit pay for agency employees to be given under the system established under this section or under rules adopted by the commissioner.

Sec. 181.055. CAREER LADDER. Requires the executive director or the executive director's designee to develop an intra-agency career ladder program. Requires the program to require intra-agency postings of all nonentry-level positions concurrently with any public posting.

Sec. 181.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Adds standard Sunset language regarding an equal employment opportunity policy.

Sec. 181.057. STATE EMPLOYEE INCENTIVE PROGRAM. Adds standard Sunset language regarding a state employee incentive program.

[Reserves Sections 181.058-181.070 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES OF AGENCY

Sec. 181.071. GENERAL POWERS AND DUTIES OF AGENCY. (a) Requires the agency to perform certain duties and functions.

(b) Requires the agency to administer other programs and services for the aging that the commissioner delegates to the agency as the commissioner determines necessary to efficiently provide those services in this state.

Sec. 181.072. INFORMATION REGARDING COMPLAINTS. Adds standard Sunset language regarding complaints.

Sec. 181.073. RULES. Authorizes the commissioner to adopt rules reasonably necessary for the agency to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the executive director and the commissioner, as adopted by rule.

[Reserves Chapters 182-200 for expansion.]

SUBTITLE C. SERVICES FOR PERSONS WITH DISABILITIES CHAPTER 201. DEPARTMENT FOR PERSONS WITH DISABILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 201.001. DEFINITIONS. Defines "advisory board," "agency," "commission," "commissioner," and "executive director."

Sec. 201.002. AGENCY. Provides that the Department for Persons with Disabilities (agency) is an agency of the state.

Sec. 201.003. SUNSET PROVISION. Continues the Department for Persons with Disabilities until September 1, 2009.

[Reserves Sections 201.004-201.020 for expansion.]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 201.021. ADVISORY BOARD FOR PERSONS WITH DISABILITIES. (a) Provides that the advisory board for persons with disabilities is created to assist the commissioner in developing rules and policies for the agency.

(b) Sets forth the composition for the advisory board for persons with disabilities.

(c) Prohibits a person from being a public member of the advisory board if the person or the person's spouse meets certain criteria.

(d) Requires the advisory board to study and make recommendations to the executive director regarding the management and operation of the agency, including policies and rules governing the delivery of services to persons who are served by the agency and the rights and duties of persons who are served or regulated by the agency.

(e) Provides that Chapter 551 (Open Meetings), Government Code, applies to the advisory board.

(f) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the advisory board.

Sec. 201.022. APPOINTMENTS. Adds standard Sunset language regarding appointments to the advisory board.

Sec. 201.023. CONFLICTS OF INTEREST. Adds standard Sunset language regarding conflicts of interest.

Sec. 201.024. TRAINING PROGRAM FOR ADVISORY BOARD MEMBERS. Adds standard Sunset language regarding a training program for advisory board members.

Sec. 201.025. TERMS. Sets forth the terms for advisory board members.

Sec. 201.026. VACANCY. Requires the governor by appointment to fill the unexpired term of a vacancy on the advisory board.

Sec. 201.027. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) Requires the governor to designate a member of the advisory board as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) Requires the members of the advisory board to elect any other necessary officers.

(c) Requires the advisory board to meet quarterly and at other times at the call of the presiding officer. Authorizes the board to hold meetings in different areas of

the state.

Sec. 201.028. REIMBURSEMENT FOR EXPENSES. Adds standard Sunset language regarding reimbursement for advisory board members.

Sec. 201.029. PUBLIC INTEREST INFORMATION AND COMPLAINTS. Adds standard Sunset language regarding information of public interest and complaints.

Sec. 201.030. PUBLIC ACCESS AND TESTIMONY. Requires the commissioner to develop and implement policies that provide the public with a reasonable opportunity to appear before the advisory board or commissioner and to speak on any issue under the jurisdiction of the agency.

Sec. 201.031. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. Adds standard Sunset language regarding policies that clearly delineate the policymaking responsibilities of the commissioner from the management responsibilities of HHSC, the executive director, and the staff of the agency.

Sec. 201.032. ANNUAL REPORT. (a) Requires the executive director to file annually with the commissioner a complete and detailed written report accounting for all funds received and disbursed by the agency during the preceding fiscal year.

(b) Requires the annual report to be in the form and be reported in the time provided by the commissioner.

Sec. 201.033. OFFICES. Requires the agency to maintain its central office in Austin. Authorizes the agency to maintain offices in other areas of the state as necessary.

[Reserves sections 201.034-201.050 for expansion.]

SUBCHAPTER C. PERSONNEL

Sec. 201.051. EXECUTIVE DIRECTOR. (a) Requires the commissioner to appoint an executive director, who is to be selected according to education, training, experience, and demonstrated ability.

(b) Provides that the executive director serves at the pleasure of the commissioner.

(c) Requires the executive director to act as the agency's chief administrative officer and as a liaison between the agency and HHSC.

(d) Requires the executive director to administer this chapter under operational policies established by the commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the executive director and the commissioner, as adopted by rule.

Sec. 201.052. PERSONNEL. (a) Authorizes the agency to employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) Requires the commissioner to prepare and by rule adopt personnel standards.

(c) Authorizes a personnel position to be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) Requires the commissioner, with the advice of the advisory board, to develop and the agency to implement policies that clearly define the responsibilities of the staff of the agency.

Sec. 201.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. Adds standard Sunset language regarding standards of conduct for state employees.

Sec. 201.054. MERIT PAY. Adds standard Sunset language regarding merit pay for agency employees.

Sec. 201.055. CAREER LADDER. Adds standard Sunset language regarding an intra-agency career ladder program.

Sec. 201.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. Adds standard Sunset language regarding an equal employment opportunity policy

Sec. 201.057. STATE EMPLOYEE INCENTIVE PROGRAM. Adds standard Sunset language regarding a state employee incentive program.

[Reserves Sections 201.058-201.070 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES OF AGENCY

Sec. 201.071. GENERAL POWERS AND DUTIES OF AGENCY. (a) Provides that the agency is responsible for performing certain functions.

(b) Requires the agency to administer other programs and services for persons with disabilities that the commissioner delegates to the agency as the commissioner determines necessary to efficiently provide those services in this state.

Sec. 201.072. INFORMATION REGARDING COMPLAINTS. Adds standard Sunset language regarding complaints

Sec. 201.073. RULES. Authorizes the commissioner to adopt rules reasonably necessary for the agency to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the executive director and the commissioner, as adopted by rule.

SECTION 2.03. APPOINTMENTS OF EXECUTIVE DIRECTORS. Requires the commissioner of health and human services, as soon as possible after the effective date of this article, to appoint the executive directors of:

- (1) the Department for Health and Mental Health in accordance with Chapter 1001, Health and Safety Code, as added by this article;
- (2) the Department for Children and Families in accordance with Chapter 161, Human Resources Code, as added by this article;
- (3) the Department on Aging in accordance with Chapter 181, Human Resources Code, as added by this article; and
- (4) the Department for Persons with Disabilities in accordance with Chapter 201, Human Resources Code, as added by this article.

SECTION 2.04. APPOINTMENTS OF BOARD MEMBERS. (a) Requires the governor, as soon as possible after the effective date of this article, to appoint the members of the advisory board for health and mental health in accordance with Chapter 1001, Health and Safety Code, as added by this article. Requires the governor in making the initial appointments, to designate three members for terms expiring February 1, 2005, two members for terms expiring February 1, 2007, and two members for terms expiring February 1, 2009.

(b) Requires the governor, as soon as possible after the effective date of this article, to appoint the members of the advisory board for child and family services in accordance with Chapter 161, Human Resources Code, as added by this article.

Requires the governor in making the initial appointments, to designate three members for terms expiring February 1, 2005, two members for terms expiring February 1, 2007, and two members for terms expiring February 1, 2009.

(c) Requires the governor, as soon as possible after the effective date of this article, to appoint the members of the advisory board for aging services in accordance with Chapter 181, Human Resources Code, as added by this article. Requires the governor in making the initial appointments, to designate three members for terms expiring February 1, 2005, two members for terms expiring February 1, 2007, and two members for terms expiring February 1, 2009.

(d) Requires the governor, as soon as possible after the effective date of this article, to appoint the members of the advisory board for persons with disabilities in accordance with Chapter 201, Human Resources Code, as added by this article. Requires the governor in making the initial appointments, to designate three members for terms expiring February 1, 2005, two members for terms expiring February 1, 2007, and two members for terms expiring February 1, 2009.

SECTION 2.05. LIMITATION ON ACTIVITIES. Authorizes a state agency created under this article to, before September 1, 2004, perform only those powers, duties, functions, and activities that relate to preparing for the transfer of powers, duties, functions, programs, and activities to that agency in accordance with Article 3 of this Act. Prohibits a state agency created under this article from operating all or any part of a health and human services program before September 1, 2004.

SECTION 2.06. INITIAL ADVISORY BOARD MEETINGS. Requires the presiding officer of the advisory board for each state agency created under this article to call the initial meeting of the advisory board as soon as possible after the advisory board members are appointed.

SECTION 2.07. EFFECTIVE DATE. Provides that this article takes effect June 1, 2004, and the Department for Health and Mental Health, the Department for Children and Families, the Department on Aging, and the Department for Persons with Disabilities are created on that date.

ARTICLE 3. INTERAGENCY TRANSFERS OF PROPERTY, RECORDS, OBLIGATIONS, FUNDS, FUNCTIONS, PROGRAMS, AND ACTIVITIES

SECTION 3.01. TRANSFERS TO THE HEALTH AND HUMAN SERVICES COMMISSION.

(a) Provides that on September 1, 2004, certain powers, duties, functions, programs, and activities are transferred to the Health and Human Services Commission.

(b) Provides that on the date specified by Subsection (a) of this section:

(1) all obligations and contracts of a state agency or entity abolished by Section 5.01 of this Act that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred to the Health and Human Services Commission;

(2) all property and records in the custody of a state agency or entity abolished by Section 5.01 of this Act that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Health and Human Services Commission; and

(3) all complaints, investigations, or contested cases that are pending before a state agency or entity abolished by Section 5.01 of this Act or the governing body of the agency or entity and that are related to a power, duty, function, program, or activity transferred under Subsection (a) of this section are transferred without change in status to the Health and Human Services Commission.

(c) Provides that a rule or form adopted by a state agency or entity abolished by Section 5.01 of this Act that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is a rule or form of the Health and Human Services Commission and remains in effect until altered by HHSC.

(d) Provides that a reference in law to a state agency or entity abolished by Section 5.01 of this Act, or to the governing body of the agency or entity, that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section means the Health and Human Services Commission.

(e) Provides that a license, permit, or certification in effect that was issued by a state agency or entity abolished by Section 5.01 of this Act and that relates to a power, duty, function, program, or activity transferred under Subsection (a) of this section is continued in effect as a license, permit, or certification of the Health and Human Services Commission.

SECTION 3.02. TRANSFERS TO THE DEPARTMENT FOR HEALTH AND MENTAL HEALTH. (a) Provides that on September 1, 2004, certain powers, duties, functions, programs, and activities, other than those related to rulemaking or policymaking, or administrative support services such as strategic planning and evaluation, audit, legal, human resources, accounting, purchasing, financial management, and contract management services, are transferred to the Department for Health and Mental Health.

(b) Provides that on the date specified by Subsection (a) of this section:

(1) all obligations and contracts of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection are transferred to the Department for Health and Mental Health;

(2) all property and records in the custody of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Department for Health and Mental Health; and

(3) all complaints, investigations, or contested cases that are pending before an entity or the governing body of an entity listed in Subsection (a) of this section and that are related to a power, duty, function, program, or activity transferred under that subsection are transferred without change in status to the Department for Health and Mental Health.

(c) Provides that a rule or form adopted by an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection is a rule or form of the Department for Health and Mental Health and remains in effect until altered by the commissioner of health and human services.

(d) Provides that reference in law to an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection means, as appropriate, the Department for Health and Mental Health or any other health and human services agency to which the commissioner of health and human services transfers the power, duty, function, program, or activity under Section 531.0165, Government Code, as added by this Act. Provides that a reference in law to the governing body of an entity listed in Subsection (a) of this section means the Health and Human Services Commission or the commissioner of health and human services.

(e) Provides that a license, permit, or certification in effect that was issued by an entity listed in Subsection (a) of this section and that relates to a power, duty, function, program, or activity transferred under that subsection is continued in effect as a license,

permit, or certification of the Department for Health and Mental Health.

SECTION 3.03. TRANSFERS TO THE DEPARTMENT FOR CHILDREN AND FAMILIES.

(a) Provides that on September 1, 2004, certain powers, duties, functions, programs, and activities, other than those related to rulemaking or policymaking, or administrative support services such as strategic planning and evaluation, audit, legal, human resources, accounting, purchasing, financial management, and contract management services, are transferred to the Department for Children and Families.

(b) Provides that on the date specified by Subsection (a) of this section:

(1) all obligations and contracts of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection are transferred to the Department for Children and Families;

(2) all property and records in the custody of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Department for Children and Families; and

(3) all complaints, investigations, or contested cases that are pending before an entity or the governing body of an entity listed in Subsection (a) of this section and that are related to a power, duty, function, program, or activity transferred under that subsection are transferred without change in status to the Department for Children and Families.

(c) Provides that a rule or form adopted by an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection is a rule or form of the Department for Children and Families and remains in effect until altered by the commissioner of health and human services.

(d) Provides that a reference in law to an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection means, as appropriate, the Department for Children and Families or any other health and human services agency to which the commissioner of health and human services transfers the power, duty, function, program, or activity under Section 531.0165, Government Code, as added by this Act. Provides that a reference in law to the governing body of an entity listed in Subsection (a) of this section means the Health and Human Services Commission or the commissioner of health and human services.

(e) Provides that a license, permit, or certification in effect that was issued by an entity listed in Subsection (a) of this section and that relates to a power, duty, function, program, or activity transferred under that subsection is continued in effect as a license, permit, or certification of the Department for Children and Families.

SECTION 3.04. TRANSFERS TO THE DEPARTMENT ON AGING. (a) Provides that on September 1, 2004, certain powers, duties, functions, programs, and activities, other than those related to rulemaking or policymaking, or administrative support services such as strategic planning and evaluation, audit, legal, human resources, accounting, purchasing, financial management, and contract management services, are transferred to the Department on Aging:

(b) Provides that on the date specified by Subsection (a) of this section:

(1) all obligations and contracts of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection are transferred to the Department on Aging;

(2) all property and records in the custody of an entity listed in Subsection (a) of this

section that are related to a power, duty, function, program, or activity transferred under that subsection and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Department on Aging; and

(3) all complaints, investigations, or contested cases that are pending before an entity or the governing body of an entity listed in Subsection (a) of this section and that are related to a power, duty, function, program, or activity transferred under that subsection are transferred without change in status to the Department on Aging.

(c) Provides that a rule or form adopted by an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection is a rule or form of the Department on Aging and remains in effect until altered by the commissioner of health and human services.

(d) Provides that a reference in law to an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection means, as appropriate, the Department on Aging or any other health and human services agency to which the commissioner of health and human services transfers the power, duty, function, program, or activity under Section 531.0165, Government Code, as added by this Act. Provides that a reference in law to the governing body of an entity listed in Subsection (a) of this section means the Health and Human Services Commission or the commissioner of health and human services.

(e) Provides that a license, permit, or certification in effect that was issued by an entity listed in Subsection (a) of this section and that relates to a power, duty, function, program, or activity transferred under that subsection is continued in effect as a license, permit, or certification of the Department on Aging.

SECTION 3.05. TRANSFERS TO THE DEPARTMENT FOR PERSONS WITH DISABILITIES. (a) Provides that on September 1, 2004, certain powers, duties, functions, programs, and activities, other than those related to rulemaking or policymaking, or administrative support services such as strategic planning and evaluation, audit, legal, human resources, accounting, purchasing, financial management, and contract management services, are transferred to the Department for Persons with Disabilities:

(b) Provides that on the date specified by Subsection (a) of this section:

(1) all obligations and contracts of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection are transferred to the Department for Persons with Disabilities;

(2) all property and records in the custody of an entity listed in Subsection (a) of this section that are related to a power, duty, function, program, or activity transferred under that subsection and all funds appropriated by the legislature for the power, duty, function, program, or activity shall be transferred to the Department for Persons with Disabilities; and

(3) all complaints, investigations, or contested cases that are pending before an entity or the governing body of an entity listed in Subsection (a) of this section and that are related to a power, duty, function, program, or activity transferred under that subsection are transferred without change in status to the Department for Persons with Disabilities.

(c) Provides that a rule or form adopted by an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection is a rule or form of the Department for Persons with Disabilities and remains in effect until altered by the commissioner of health and human services.

(d) Provides that a reference in law to an entity listed in Subsection (a) of this section that relates to a power, duty, function, program, or activity transferred under that subsection means, as appropriate, the Department for Persons with Disabilities or any other health and human services agency to which the commissioner of health and human services transfers the power, duty, function, program, or activity under Section 531.0165, Government Code, as added by this Act. Provides that a reference in law to the governing body of an entity listed in Subsection (a) of this section means the Health and Human Services Commission or the commissioner of health and human services.

(e) Provides that a license, permit, or certification in effect that was issued by an entity listed in Subsection (a) of this section and that relates to a power, duty, function, program, or activity transferred under that subsection is continued in effect as a license, permit, or certification of the Department for Persons with Disabilities.

SECTION 3.06. FACILITATION OF TRANSFERS BY COMMISSIONER OF HEALTH AND HUMAN SERVICES. (a) Requires the commissioner, to facilitate the transfer of power, duties, functions, programs, and activities among the state's health and human services agencies, the Health and Human Services Commission, and other agencies as provided by this article with a minimal negative effect on the delivery of health and human services in this state, to:

- (1) for each power, duty, function, program, or activity transferred under this article, make certain determinations; and
- (2) oversee and assist the entities listed in Sections 3.01, 3.02, 3.03, 3.04, and 3.05 of this article in transferring the powers, duties, functions, programs, activities, records, property, funds, obligations, and employees in accordance with this article.

(b) Requires a state agency or entity abolished by Section 5.01 of this Act to assist the commissioner of health and human services in planning for an orderly transfer of powers, duties, functions, programs, and activities as provided by this article.

SECTION 3.07. APPLICABILITY OF FORMER LAW. Provides that an action brought or proceeding commenced before the effective date of a transfer prescribed by this article, including a contested case or a remand of an action or proceeding by a reviewing court, is governed by the laws and rules applicable to the action or proceeding before the transfer.

ARTICLE 4. OPERATION OF THE MEDICAL ASSISTANCE PROGRAM

SECTION 4.01. Amends Section 32.024, Human Resources Code, by adding Subsection (t-1) to prohibit the Health and Human Services Commission (department), in its rules governing the medical transportation program, from prohibiting a recipient of medical assistance from receiving transportation services through the program on the basis that the recipient resides in a nursing facility.

SECTION 4.02. Amends Section 32.026, Human Resources Code, by adding Subsection (d-1) to require the department to establish not more than four call centers for purposes of determining and certifying the eligibility and need for public assistance benefits administered by the department, including determining and certifying the eligibility and need for medical assistance for children under 19 years of age.

SECTION 4.03. Amends Chapter 32B, Human Resources Code, by adding Section 32.0291, as follows:

Sec. 32.0291. **PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.** (a)
Authorizes the department, notwithstanding any other law, to:

(1) perform a prepayment review of a claim for reimbursement under the medical assistance program to determine whether the claim involves fraud or abuse; and

(2) as necessary to perform that review, withhold payment of the claim for not more than five working days without notice to the person submitting the claim.

(b) Authorizes the department notwithstanding any other law, to impose a postpayment hold on payment of future claims submitted by a provider if the department has reliable evidence that the provider has committed fraud or wilful misrepresentation regarding a claim for reimbursement under the medical assistance program. Requires the department to notify the provider of the postpayment hold not later than the fifth working day after the date the hold is imposed.

SECTION 4.04. Amends Section 32.032, Human Resources Code, as follows:

Sec. 32.032. New heading: PREVENTION AND DETECTION OF FRAUD AND ABUSE. Makes conforming changes.

SECTION 4.05. Amends Section 32.0321(a), Human Resources Code, to require the department by rule to require a provider of medical assistance to file with the department a surety bond in a reasonable amount if the department identifies an irregularity relating to the provider's services under the medical assistance program that indicates the need for protection against potential future acts of fraud or abuse.

SECTION 4.06. Amends Section 32.039(a), Human Resources Code, by adding Subdivision (1-a) to provide that "inducement" includes a service, cash in any amount, entertainment, or any item of value.

SECTION 4.07. Amends Section 32.039, Human Resources Code, by amending Subsections (b), (u), and (v) and adding Subsections (w) and (x) as follows:

(b) Provides that a person commits a violation if the person:

(1) presents or causes to be presented to the department a claim that contains a statement or representation the person knows or should know to be false;

(1-a) engages in conduct that violates Section 102.001, Occupations Code;

(1-b) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program;

(1-c) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1-d) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for

which payment made be made, in whole or in part, under the medical assistance program;

(1-e) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order or arrange for or recommend the purchase, lease, or order of any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1-f) provides or offers an inducement in a manner or for a purpose not otherwise prohibited by this section or Section 102.001, Occupations Code, to an individual, including a recipient, provider, or employee of a provider, for the purpose of influencing a decision regarding selection of a provider or receipt of a good or service under the medical assistance program or for the purpose of otherwise influencing a decision regarding the use of goods or services provided under the medical assistance program; or

(2) No change to subsection.

(u) Makes conforming changes.

(v) Makes conforming changes.

(w) Authorizes the department by rule to prescribe criteria under which a person described by Subsection (u) or (v) is not prohibited from providing or arranging to provide health care services under the medical assistance program. Authorizes the criteria to include consideration of certain factors.

(x) Provides that Subsections (b)(1-b) through (1-f) do not prohibit a person from engaging in:

(1) generally accepted business practices, as determined by department rule, including:

(A) conducting a marketing campaign;

(B) providing token items of minimal value that advertise the person's trade name; and

(C) providing complimentary refreshments at an informational meeting promoting the person's goods or services; or

(2) conduct specifically authorized by law.

SECTION 4.08. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0391 as follows:

Sec. 32.0391. CRIMINAL OFFENSE. (a) Provides that a person commits an offense if the person commits a violation under Section 32.039(b)(1-b), (1-c), (1-d), or (1-e).

(b) Provides that an offense under this section is a state jail felony.

(c) Provides that if conduct constituting an offense under this section also constitutes an offense under another provision of law, including a provision in the Penal Code, the person may be prosecuted under either this section or the other provision.

SECTION 4.09. Amends Chapter 32B, Human Resources Code, by adding Section 32.0423, as follows:

Sec. 32.0423. RECOVERY OF REIMBURSEMENTS FROM HEALTH COVERAGE PROVIDERS. Requires the medical assistance identification card of a recipient of medical assistance to state whether the recipient is covered by any third-party health coverage or insurance. Requires a health care service provider to the extent allowed by federal law, to seek reimbursement from available third-party health coverage or insurance before billing the medical assistance program.

SECTION 4.10. Amends Section 32.050, Human Resources Code, by adding Subsections (d) and (e), as follows:

(d) Requires a nursing facility, home health services provider, or any other similar long-term care services provider to:

- (1) seek reimbursement from Medicare before billing the medical assistance program for services provided to an individual identified under Subsection (a); and
- (2) as directed by the department, appeal Medicare claim denials for payment of services provided to an individual identified under Subsection (a).

(e) Prohibits the medical assistance program, if the Medicare reimbursement rate for a service provided to an individual identified under Subsection (a) exceeds the medical assistance reimbursement rate for a comparable service, from paying a Medicare coinsurance or deductible amount for that service.

SECTION 4.11. Amends Chapter 32B, Human Resources Code, by adding Section 32.060 as follows:

Sec. 32.060. THIRD-PARTY BILLING VENDORS. (a) Prohibits a third-party billing vendor from submitting a claim with the department for reimbursement on behalf of a provider of medical services under the medical assistance program unless the vendor has entered into a contract with the department authorizing that activity.

(b) Requires the contract to the extent practical, to contain provisions comparable to the provisions contained in contracts between the department and providers of medical services, with an emphasis on provisions designed to prevent fraud or abuse under the medical assistance program. Requires the contract, at a minimum, to require the third-party billing vendor to take certain actions.

(c) Requires the department, on receipt of a claim submitted by a third-party billing vendor, to send a remittance notice directly to the provider referenced in the claim. Requires the notice to:

- (1) include detailed information regarding the claim submitted on behalf of the provider; and
- (2) require the provider to review the claim for accuracy and notify the department promptly regarding any errors.

(d) Requires the department to take all action necessary, including any modifications of the department's claims processing system, to enable the department to identify and verify a third-party billing vendor submitting a claim for reimbursement under the medical assistance program, including identification and verification of any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

SECTION 4.12. Amends Chapter 531B, Government Code, by adding Sections 531.0392 and 531.063, as follows:

Sec. 531.0392. RECOVERY OF THIRD-PARTY REIMBURSEMENTS UNDER

MEDICAID. (a) Defines "dually eligible individual."

(b) Requires HHSC to contract directly on a no-risk contingency fee basis with a consulting firm experienced in third-party reimbursements to assist the state in increasing third-party reimbursements under the Medicaid program.

(c) Requires HHSC to require a consulting firm with whom HHSC contracts under this section to perform certain actions.

(d) Requires HHSC to obtain Medicaid reimbursement from each fiscal intermediary who makes a payment to a service provider on behalf of the Medicare program, including a reimbursement for a payment made to a home health services provider or nursing facility for services rendered to a dually eligible individual.

Sec. 531.063. MEMORANDUM OF UNDERSTANDING RELATING TO CERTAIN CLASS-ACTION LAWSUITS. Requires HHSC to enter into a memorandum of understanding with the office of the attorney general to establish procedures for HHSC to identify and submit requests for the review of any health-related class-action lawsuits filed in this state or another state to make certain determinations.

SECTION 4.13. Amends Section 531.102, Government Code, by amending Subsections (a) and (d) and adding Subsections (f) and (g), as follows:

(a) Makes a conforming change.

(d) Makes a conforming change.

(f) Provides that notwithstanding any other law, for purposes of obtaining information relevant to the Investigations and Enforcement Office's (office) duties from a law enforcement agency, prosecutor, or governmental entity, the office is considered to be a law enforcement agency and may obtain the information in the same manner as another law enforcement agency. Provides that information obtained by the office under this subsection that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 in the manner provided by Section 552.108.

(g) Authorizes the office, in connection with the investigation of fraud and abuse in the provision of health and human services, to issue a subpoena throughout this state to compel the attendance and testimony of a witness or production of records. Provides that the subpoena may compel attendance or production at the office or at another place designated in the subpoena.

SECTION 4.14. Amends Chapter 531C, Government Code, by adding Section 531.1021, as follows:

Sec. 531.1021. SEIZURE OF ASSETS. (a) Authorizes HHSC, through HHSC's office of investigations and enforcement, to seize assets owned by a person if certain conditions are met.

(b) Requires HHSC to provide a person whose assets are seized with an opportunity for a hearing at which the person may contest the seizure.

(c) Prohibits HHSC from disposing of seized assets until certain conditions are met.

SECTION 4.15. Amends Section 531.103, Government Code, by adding Subsections (c-1) and (e-1) and amending Subsection (e), as follows:

(c-1) Require the office of the attorney general, not later than November 1 of each year, in addition to the report required by Subsection (c), to prepare and submit to the governor, the legislature, and the comptroller a report that specifically addresses the activities of the attorney general's Medicaid fraud control unit and civil Medicaid fraud section. Requires the attorney general to consult with the comptroller regarding the format of the report and make reasonable efforts to provide the report in the format requested by the comptroller. The report must specify, for the Medicaid fraud control unit and the civil Medicaid fraud section, respectively, certain information.

(e) Requires HHSC to refer a case of suspected fraud, waste, or abuse under the state Medicaid program to the appropriate United States attorney, district attorney, county attorney, city attorney, or private collection agency if the attorney general fails to act within 30 days of referral of the case to the office of the attorney general. Provides that a failure by the attorney general to act within 30 days constitutes approval by the attorney general under Section 2107.003.

(e-1) Provides that in addition to the provisions required by Subsection (a), the memorandum of understanding required by this section must identify circumstances under which HHSC may refer a case of suspected fraud, waste, or abuse under the state Medicaid program directly to the appropriate United States attorney, district attorney, county attorney, city attorney, or private collection agency. Provides that a case referred in accordance with this subsection is considered approved by the attorney general under Section 2107.003.

SECTION 4.16. Amends Section 531.107(b), Government Code, to provide that the task force is composed of representatives of certain state agency offices, commissions, and departments.

SECTION 4.17. STUDY. (a) Requires the Medicaid and Public Assistance Fraud Oversight Task Force, with the participation of the Texas Department of Health's Bureau of Vital Statistics and other agencies designated by the comptroller, to study procedures and documentation requirements used by the state in confirming a person's identity for purposes of establishing entitlement to Medicaid and other benefits provided through health and human services programs.

(b) Requires the Medicaid and Public Assistance Fraud Oversight Task Force, with assistance from the agencies participating in the study required by Subsection (a) of this section, to, not later than December 1, 2004, submit a report to the legislature containing recommendations for improvements in the procedures and documentation requirements described by Subsection (a) of this section that would strengthen the state's ability to prevent fraud and abuse in the Medicaid program and other health and human services programs.

SECTION 4.18. CONSOLIDATION OF CERTAIN DIVISIONS AND ACTIVITIES. (a) Requires HHSC not later than March 1, 2004, to consolidate the Medicaid post-payment third-party recovery divisions or activities of the Texas Department of Human Services, the Medicaid vendor drug program, and the state's Medicaid claims administrator with the Medicaid post-payment third-party recovery function.

(b) Requires HHSC to use HHSC's Medicaid post-payment third-party recovery contractor for the consolidated division.

(c) Requires HHSC to update its computer system to facilitate the consolidation.

SECTION 4.19. MEMORANDUMS OF UNDERSTANDING. (a) Requires HHSC and the office of the attorney general, not later than January 1, 2004, to enter into the memorandum of understanding required by Section 531.063, Government Code, as added by this Act.

(b) Requires the office of the attorney general and the Health and Human Services Commission, not later than December 1, 2003, to amend the memorandum of

understanding required by Section 531.103, Government Code, as necessary to comply with Section 531.103(e-1), Government Code, as added by this Act.

SECTION 4.20. APPLICABILITY. Makes the changes in law made by this Act through amending Section 32.039(b), Human Resources Code, and adding Section 32.0391, Human Resources Code, prospective

SECTION 4.21. EFFECTIVE DATE. (a) Provides that this article takes effect September 1, 2003, except as otherwise provided by Subsection (b) of this section.

(b) Provides that Section 32.060, Human Resources Code, as added by this article, takes effect January 1, 2004.

ARTICLE 5. MISCELLANEOUS PROVISIONS

SECTION 5.01. ABOLITION OF STATE AGENCIES AND ENTITIES. (a) Provides that 24 state agencies and entities are abolished.

(b) Provides that the abolition of a state agency or entity listed in Subsection (a) of this section and the transfer of its powers, duties, functions, programs, activities, obligations, rights, contracts, records, property, funds, and employees as provided by this Act do not affect or impair an act done, any obligation, right, order, permit, certificate, rule, criterion, standard, or requirement existing, or any penalty accrued under former law, and that law remains in effect for any action concerning those matters.

SECTION 5.02. REPEAL. Repealer: Article 2, Chapter 1505, Acts of the 76th Legislature, Regular Session, 1999.

SECTION 5.03. REQUIRED WAIVER OR AUTHORIZATION. Provides that if before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 5.04. EFFECTIVE DATE. Provides that this Act takes effect September 1, 2004, except as otherwise provided by this Act.